



Alerts

Medical Litigation Alert

May 26, 2010

Health Care Alert

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Wisconsin Repeals 180-Day Notice Requirement for Malpractice Claims Against the State and Other Governmental Bodies

Until this month, plaintiffs claiming medical malpractice in Wisconsin against an officer, employee or agent of the state were required to file a "notice of claim" on the state attorney general within 180 days of discovery of the alleged injury (or the date on which, in the exercise of reasonable diligence, the injury should have been discovered). This included claims against state operated health care facilities and their employees. Similarly, plaintiffs were required to provide written notice of the circumstances of any medical malpractice claim against a local governmental body, officer, agent, or employee to the applicable governmental entity and its representative within 180 days after discovery of the injury. Failure to provide an appropriate notice of claim in either circumstance could have barred the plaintiff's claim.

On May 11, 2010, Wisconsin Governor Jim Doyle signed into law 2009 Wisconsin Act 278, which amends Wis. Stat. § 893.80(1m) and 893.82(5m) to eliminate these notice of claim requirements. The new legislation applies to claims against governmental bodies the same three-year statute of limitations applicable to medical malpractice claims against private health care providers. The Act takes effect May 27, 2010, and applies to acts or omissions occurring on or after that date.

Wisconsin Sets Statutory Fee Schedules for Copies of Health Care Records

The most recent Wisconsin state budget, 2009 Wisconsin Act 28 ("the Act"), changed the fees that may be charged for copies of health care records by setting a statutory fee schedule. The schedule became effective July 1, 2009. Regulations promulgated by the Wisconsin Department of Health Services previously determined the maximum fees a health care provider could charge for copies of X-ray reports or patient health care records and were repealed in favor of the statutory schedules set forth below.

Fees for Requests by Patients or Persons Authorized by the Patient

Health care providers cannot charge more than the total of all of the following that apply:

- For paper copies, 35 cents per page;
- For microfiche or microfilm copies, \$1.25 per page;
- For a print of an X-ray, \$10 per image;
- For providing copies in digital or electronic format, a reasonable rate which does not exceed the costs of paper copies or the provider's labor costs;
- Actual shipping costs; and
- An additional fee equal to 10 percent of the total fees otherwise incurred (as listed above), if the health care provider chooses to comply with a request that delivery be made within seven or fewer days.



However, if a patient or person authorized by him or her requests copies of the patient's health care records under the relevant subsection of the Act for use in appealing a denial of Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), the health care provider may charge the patient or person authorized by him or her no more than the amount that the Social Security Administration reimburses the Department of Health Services for copies of patient health care records. If a patient is eligible for medical assistance, a health care provider such as the Wisconsin Department of Corrections may not, with some statutory exceptions, charge a fee for the first set of copies of a patient's health records it provides. However, the health care provider may require that a patient or person authorized by him or her provide proof that the patient is eligible for medical assistance before providing copies without charge, and may charge any applicable fees for providing a second or additional set of copies of patient health care records for a patient who is eligible for medical assistance.

When a request is made by a person other than a patient or a person authorized by him or her, as defined by Wis. Stat. § 146, the health care provider may charge the same fees noted above, as well as a \$5 fee for certification of copies, and a single charge of \$15 for processing and handling all copies requested.

As with record requests directly from a patient, if a requestor seeks copies of a patient's health care records for the purpose of determining eligibility for SSDI or SSI, the health care provider may charge no more than the amount that the Social Security Administration reimburses for copies of patient health care records.